

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the  
Family Child Care License of  
Helen L. Klein

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

This matter came on for Hearing before Administrative Law Judge Steve M. Mihalchick on March 27, 2003, at the Chisago County Government Center, 313 North Main Street, Room 103, Center City, MN. The hearing record closed on the date of the hearing.

Alfred S. Alliegro, Assistant Chisago County Attorney, Chisago County Government Center, 313 North Main Street, Room 373, Center City, MN 55012-9663, appeared for the Minnesota Department of Human Services.

Helen L. Klein, 13125 Sylvan Avenue, Lindstrom, MN 55045, appeared pro se.

**NOTICE**

This Report is a recommendation, **not** a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of comments, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

**STATEMENT OF ISSUES**

Should the revocation of Licensee's family child care license, based upon her daughter-in-law's disqualification, be upheld? The Administrative Law Judge concludes that it should.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Licensee is a resident of Chisago County and has been licensed since approximately 1977.<sup>[1]</sup> She provides child care at her residence in Lindstrom. Chisago County Health & Human Services (the County) is primarily concerned with Licensee's daughter-in-law residing in Licensee's home, Licensee's failure to report her daughter-in-law residing in her home, and past and present cleanliness and safety issues in Licensee's home.

2. Licensee has three sons and one daughter and is recently divorced as of March 7, 2002.<sup>[2]</sup> During the time in question her household consisted of, relevant to this matter, her son Christopher, his wife Amy Murphy Klein, a son of Amy Murphy's from another relationship, and Christopher and Amy's biological son.<sup>[3]</sup>

3. In the early 1990's, Licensee provided child care for approximately fourteen children, some of whom stayed overnight with her.<sup>[4]</sup> In 1997, Licensee cut back the number of children to approximately six when her youngest son was seriously injured and Licensee aided in his recuperation in her home. For the last two years, Licensee has provided child care for three to four children. Currently, she cares for one boy two and one-half days per week.

4. Licensee first received a correction order from Chisago County in 1993, when a County licensing worker observed no sheets on a crib mattress, clothes on the toy room floor, and clothes on the furniture in the living area.<sup>[5]</sup> Due to this correction order, in 1994, the County put Licensee on probation.<sup>[6]</sup>

5. In 1997, Licensee received another cleanliness correction order, during an unannounced visit, when a County licensing worker saw clothes on the furniture in a room utilized by her daycare children.<sup>[7]</sup>

6. On May 18, 1999, Chisago County Day Care Licenser Georgette Bruhn, during an unannounced visit, observed that Licensee had failed to cover her garbage container, put plastic bags out of reach, secure knives, and have a surge protector on the outlet for an aquarium. Ms. Bruhn issued Licensee a correction order at that time.<sup>[8]</sup>

7. On May 1, 2001, Ms. Bruhn paid a scheduled visit to Licensee's home and observed that Licensee had failed to charge her fire extinguisher annually, provide shots for her cats, clean and arrange the toy room, repaint some areas of chipped paint, and use a surge protector on an aquarium. Ms. Bruhn also learned that Licensee's son had

a gun cabinet and was unable to verify at that time that the cabinet was locked.<sup>[9]</sup> Ms. Bruhn issued a correction order giving Licensee a deadline of June 1, 2001, to correct these issues.

8. On May 14, 2001, Ms. Bruhn returned to Licensee's home and verified that the gun cabinet was locked.<sup>[10]</sup> On June 5, 2001, Ms. Bruhn again visited Licensee's home where Licensee informed her that the fire extinguisher had been charged, the cats had received their shots, the chipped paint had been repainted, and the aquarium outlet had a surge protector.<sup>[11]</sup> The toy room had not yet been cleaned and appropriately arranged, and Ms. Bruhn gave Licensee an extension to June 14, 2001. When Ms. Bruhn returned to Licensee's home after June 14, 2001, the toy room issues had been corrected.<sup>[12]</sup>

9. Around this time, Licensee's son's girlfriend, Amy Murphy, and their son moved into Licensee's home. Licensee, while not fond of Ms. Murphy, tolerated her presence in the house and was able to spend time with her grandson.

10. Pursuant to Minnesota law,<sup>[13]</sup> on or about June 4, 2001, as a member of Licensee's household, Ms. Murphy underwent a background study, which revealed a criminal history.<sup>[14]</sup> The County issued a disqualification to Ms. Murphy and ordered that she move out of Licensee's home and have no contact with the daycare children. Ms. Murphy did not request reconsideration of the disqualification, and by letters dated August 6, 2001, Ms. Bruhn notified both Licensee and Ms. Murphy that the disqualification was determined valid. The County prohibited Ms. Murphy from residing with Licensee or from being present at Licensee's home during daycare hours.<sup>[15]</sup> Ms. Murphy refused to tell Licensee the nature of the disqualification and would say only that an incident had occurred between her and her brother-in-law when she was 15 years old.<sup>[16]</sup> On or about July 5, 2001, Licensee's son and Ms. Murphy moved out of Licensee's home to Osseola, WI.<sup>[17]</sup>

11. Sometime during the next year, Licensee's son and Ms. Murphy were married. Licensee visited her son in Wisconsin on a couple of occasions. Licensee's now-daughter-in-law did not return to Licensee's home during the year.<sup>[18]</sup>

12. In the summer of 2002, Licensee's son and daughter-in-law began experiencing financial problems. As a solution to their problems, Licensee's son suggested that he and his wife move back into Licensee's home and work to buy the house from Licensee.<sup>[19]</sup> Licensee resisted this suggestion and knew that she could lose her child care license if she allowed her daughter-in-law to move back into the house.

13. Licensee felt the importance of her family outweighed compliance with the licensing requirements and eventually acquiesced. On July 1, 2002, her son Christopher, her daughter-in-law, her grandson, and the daughter-in-law's son from a previous relationship<sup>[20]</sup> moved back into Licensee's home.<sup>[21]</sup> Licensee did not inform the County that her daughter-in-law was again residing in the home and that she would be present during daycare hours. Licensee told her daughter-in-law that she was not

allowed near the daycare children, and the daughter-in-law remained on the upper level of the house, away from the children, most of the time. Licensee's daughter-in-law remained unemployed while living in Licensee's home.<sup>[22]</sup>

14. On October 1, 2002, Ms. Bruhn and another licensing worker made an unannounced visit to Licensee's home. Licensee's grandson answered the door and informed Ms. Bruhn that his mother was living in the home. Licensee then admitted to Ms. Bruhn that her son and daughter-in-law had moved back into the home on July 1, 2002, and that she failed to report the change in residence.<sup>[23]</sup>

15. During the October 1, 2002, visit, Ms. Bruhn found debris on the kitchen floor area, pet urine and defecation stains and smell on the toy room carpet, dirty toys in the toy room and no gate preventing the children from entering the toy room, a paper shredder in the living room, a cordless drill and a knife accessible to the children, dirty clothes on the bathroom floor and in the living room area, no disposable or clean towels available in the bathroom, and no plug covers on the outlets.<sup>[24]</sup> Ms. Bruhn issued a correction order requiring Licensee to remedy these violations within 24 hours.

16. Ms. Bruhn returned to Licensee's home the next day,<sup>[25]</sup> by which time Licensee had removed the shredder from the living room, picked up the clothes from the bathroom and living room, plugged the outlets, and placed clean towels in the bathroom.<sup>[26]</sup> Licensee had gated the toy room, but had not yet cleaned the carpet.<sup>[27]</sup>

17. After returning to her office, Ms. Bruhn consulted with her supervisor and, based upon her observations at Licensee's home, issued another correction order requiring Licensee to construct a handrail for some steps to the side entrance of the house and a guardrail on the new deck in front of the house.<sup>[28]</sup>

18. On October 6, 2002, at approximately 11:00 p.m., Licensee and her son were using the vacuum cleaner following some painting work.<sup>[29]</sup> Licensee's daughter-in-law became enraged by the noise and, with a scissors in hand, threatened to cut the cord on the vacuum cleaner. Licensee pushed her daughter-in-law in an attempt to stop her from cutting the cord. Two of Licensee's teenaged grandchildren and one of the grandchildren's fiancé witnessed this incident. The grandchildren returned home and informed their father, another of Licensee's sons, what had happened. The son called the police, who went to Licensee's home. The reporting officer's Initial Complaint Report stated that Licensee's daughter-in-law held a scissors to Licensee's throat, and the officer advised Licensee to get a restraining order or an unlawful detainer.<sup>[30]</sup> Licensee denies that her daughter-in-law held a scissors to her throat.

19. By letter to the Commissioner dated October 8, 2002, Ms. Bruhn recommended that the child care license of Licensee be revoked.<sup>[31]</sup> The County cited Licensee's violation of Minn. Stat. § 245.04, subd. 3(d) in allowing her daughter-in-law to move back into the home after notification of her disqualification; Licensee's violation of Minn. Stat. § 245.04, subd. 3 and Minn. R. 9502.0375, subp. 2 in failing to report to the County the change in circumstances resulting from her son and daughter-in-law

moving back into the home; and repeated correction orders regarding cleanliness as support for the revocation.

20. By letter dated December 19, 2002, the Department issued an Order of Revocation to Licensee based upon the issues in Ms. Bruhn's recommendation letter.<sup>[32]</sup> The letter informed Licensee of her right to submit a written appeal of the revocation within ten days. Licensee submitted a timely written appeal in which she attempted to explain the reasons and remedies for her various violations since 1993.<sup>[33]</sup>

21. The Department issued a Notice of and Order for Hearing on or about January 7, 2003, setting the hearing to take place on March 27, 2003.

22. By letter to the Commissioner dated January 22, 2003, Ms. Bruhn corrected inaccurate information contained in the Order for Revocation issued by the Department.<sup>[34]</sup> Ms. Bruhn made technical corrections, elaborated on the issue of the stained carpet in the toy room, and also added that at the time of Licensee's daughter-in-law's disqualification, the County had requested that the daughter-in-law undergo a psychological evaluation, which she never completed. Finally, the letter contained a summary of the October 6, 2002, incident between Licensee and her daughter-in-law.

23. On or about March 1, 2003, Licensee's son and daughter-in-law moved out of Licensee's home into a nearby condominium.<sup>[35]</sup> Since that time, Licensee's daughter-in-law has not returned to the home.

## **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Minn. Stat. § 245A.04, subd. 3(a) mandates that the Commissioner conduct a background study of the individuals specified in subd. 3(c), which include "persons age 13 and over living in the household where the licensed program will be provided."

4. If the results of the background study reveal that the individual has been convicted of, admitted to, or is shown by a preponderance of the evidence to have committed certain specified crimes, "the individual shall be disqualified from any position allowing direct contact with persons receiving services from the license holder . . . ."<sup>[36]</sup>

5. A child care provider's license shall be revoked, not renewed, or suspended if the provider, or any other person living in the day care residence has a disqualification under Minn. Stat. § 245A.04, subd. 3d.<sup>[37]</sup>

6. Pursuant to Minn. Stat. § 245A.04, subd. 3f, a disqualification is deemed conclusive if the individual did not request reconsideration of the disqualification.

7. Neither Licensee nor her daughter-in-law requested reconsideration of the disqualification, and therefore the Commissioner's finding that the disqualification was valid is final. Accordingly, the Administrative Law Judge can review only the revocation of the license.

8. Minn. R. 9502.0375, subp. 2 requires Licensee to report, within 30 days, any change in her regular household membership.

9. The Department's health and sanitation rules require that Licensee's daycare residence be free of dirt, rubbish, or peeling paint;<sup>[38]</sup> that all toilet training equipment be washed with soap and water at least daily;<sup>[39]</sup> and that a child's hands must be washed, with the assistance of Licensee if necessary, before eating or after using the toilet.<sup>[40]</sup>

10. The Uniform Building Code generally requires handrails on both sides of stairways. However, an exception allows private stairways or stairways serving one single dwelling unit to have only one handrail.<sup>[41]</sup> The Uniform Building Code further requires that open sides of stairways be protected by a guardrail.<sup>[42]</sup>

11. It is the Commissioner's burden to demonstrate reasonable cause to believe that Licensee failed to comply fully with applicable law or rule. If the Commissioner demonstrates reasonable cause existed, then Licensee must show by a preponderance of the evidence that she fully complied with the law or rule at the time of the alleged violations.<sup>[43]</sup>

12. The Commissioner demonstrated reasonable cause to believe that Licensee allowed her daughter-in-law to reside in Licensee's home despite her disqualification, failed to report the change in household residence within 30 days, and repeatedly failed to maintain safe and sanitary conditions in her home. Licensee failed to prove that she fully complied with applicable law or rule at the time of the alleged violations.

13. Revocation of Licensee's child care license is appropriate because of her knowing and willful failure to comply with an order of the Department and her repeated failure to maintain safe and sanitary conditions for the daycare children in her home.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner affirm the revocation of Licensee's family child care license.

Dated: April 17, 2003

s/Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Minnesota Department of Human Services is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded. No transcript prepared.

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<sup>[1]</sup> Testimony of Licensee.

<sup>[2]</sup> Ex. 10. Licensee's ex-husband experienced problems with alcohol during the marriage. On August 26, 1999, Licensee was issued a conditional license due to her then-husband's drinking interfering with her child care business. On May 27, 2000, Licensee was indefinitely suspended, and on June 2, 2000, Licensee appealed the suspension. On April 10, 2001, Licensee reached an agreement with the Commissioner and excluded her then-husband from the home and from contact with the children. Licensee's ex-husband currently lives across the alley from Licensee.

<sup>[3]</sup> Testimony of Licensee. Some of Licensee's other children may have been living in the home also.

<sup>[4]</sup> Testimony of Licensee.

<sup>[5]</sup> Ex. 2. Testimony of Licensee.

<sup>[6]</sup> Ex. 2. Testimony of Licensee.

<sup>[7]</sup> Testimony of Licensee.

<sup>[8]</sup> Testimony of Licensee.

<sup>[9]</sup> Ex. 5.

<sup>[10]</sup> Testimony of Georgette Bruhn. There is disagreement among the parties as to whether Ms. Bruhn also returned to Licensee's home on May 5, 2001.

<sup>[11]</sup> Testimony of Licensee.

<sup>[12]</sup> Testimony of Georgette Bruhn.

<sup>[13]</sup> Minn. Stat. § 245A.04, subd. 3(c)(2).

<sup>[14]</sup> Ex. 3.

<sup>[15]</sup> Ex. 3.

<sup>[16]</sup> Testimony of Licensee. While the exact nature of the offenses is unknown, Georgette Bruhn testified that the statutory "look-back" periods on Amy Murphy Klein's offenses were 7 (misdemeanors) and 15 years (felonies).

<sup>[17]</sup> Testimony of Licensee.

<sup>[18]</sup> Testimony of Licensee.

- [19] Testimony of Licensee.
- [20] Licensee's daughter-in-law had recently regained custody of her son.
- [21] Testimony of Licensee. The couple also brought with them a puppy and two cats.
- [22] Ex. 1, p. 2.
- [23] Testimony of Georgette Bruhn.
- [24] Exs. 6 and 7.
- [25] Licensee's daughter-in-law was in the living room with her own children as well as two daycare children during this visit. Licensee was not present in the room.
- [26] Testimony of Georgette Bruhn.
- [27] Licensee had arranged to have the carpet cleaned the following weekend.
- [28] Licensee's sons had torn out a ramp on the side entrance to the house and built a deck in the front of the house.
- [29] Testimony of Licensee.
- [30] Ex. 9.
- [31] Ex. 1.
- [32] Ex. 2.
- [33] Ex. 10.
- [34] Ex. 8.
- [35] Testimony of Georgette Bruhn and Licensee.
- [36] Minn. Stat. § 245A.04, subd. 3d(a).
- [37] Minn. R. 9502.0335, subp. 6.
- [38] Minn. R. 9502.0435, subp. 1.
- [39] Minn. R. 9502.0435, subp. 14.
- [40] Minn. R. 9502.0435, subp. 15.
- [41] Uniform Building Code (94) Section 1006.9.
- [42] Uniform Building Code (97) Section 509.1. Section 509.3 elaborates that "[o]pen rails shall have intermediate rails or an ornamental pattern such that a sphere 4 inches (102 mm) in diameter cannot pass through." Also, the triangular area formed by the tread of the stair, the rise of the stair and the guardrail must not create a gap of more than 6 inches.
- [43] Minn. Stat. § 245A.08, subd. 3(a).